

**Jul 25, 2019**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LUIS A. AVILA,

Petitioner,

v.

JAMES R. KEY,

Defendants.

No. 2:18-cv-00212-SAB

**ORDER DENYING PETITION FOR  
FEDERAL HABEAS RELIEF**

Before the Court is Luis Avila's (Petitioner) Petition for Writ of Habeas Corpus by a Person in State Custody, ECF No. 5. Petitioner is an inmate at the Airway Heights Corrections Center pursuant to a judgment and sentence of the Asotin County Superior Court. He was convicted by jury verdict on one count of second degree rape. Petitioner requests this Court issue a writ of habeas corpus, arguing his conviction was obtained in violation of the Fifth and Fourteenth Amendments to the United States Constitution. For the following reasons, the Court denies the petition for federal habeas relief.

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## FACTS<sup>1</sup>

On June 13, 2011, Detective Jackie Nichols received a report that Bonnie Larson, an elderly woman residing a Sycamore Glen Family Home – an adult care facility – had been raped at the facility by an employee later identified as Luis Avila.

Upon receiving this report, Detective Nichols called Mr. Avila and “asked if he would be willing to come in for an interview.” Mr. Avila agreed, and together they “arranged a time which would be mutually convenient.” Sharee Kromrei, the owner of Sycamore Glen, and a friend of Mr. Avila’s, then contacted Detective Nichols and asked to be present at the interview. Detective Nichols agreed.

On June 16, 2011, Ms. Kromrei drove Mr. Avila to the sheriff’s office. Detective Nichols escorted them to the interview room, which is

where we conduct all our interviews, victim interviews, child/victim interviews, adult interviews. So it’s, the setting is conducive to being comfortable it’s got upholstered chairs, pictures on the walls kind of a neutral tone in the paint, carpet, you know, it’s like a throw rug type carpet on the floor.

Once in the interview room, Ms. Kromrei and Mr. Avila sat next to each other on the side of the table nearest to the door. Nothing blocked Mr. Avila’s path to the door.

Detective Nichols, in full uniform, told Mr. Avila he was free to leave at any time. At no time was Mr. Avila handcuffed or physically restrained. Neither Ms. Kromrei nor Mr. Avila were searched. Detective Nichols did not inform Mr. Avila of his *Miranda*<sup>2</sup> rights before interviewing him.

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<sup>1</sup> The facts of this case are contained in the unpublished opinion of the Washington Court of Appeals, *Washington v. Avila*, No. 32113-4-III. ECF No. 9-1 at 750-54.

<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

1 During the interview, which lasted no more than 20 minutes, Mr. Avila  
2 appeared to understand the questions he was asked and the allegations at issue,  
3 never declined to answer any questions, never requested an interpreter or a lawyer,  
4 and never asked to leave. When the interview was over, Mr. Avila and Ms.  
5 Kromrei walked out of the sheriff's office together.

6 Nearly a year later, on May 15, 2012, the State charged Luis Avila with the  
7 second degree rape of Bonnie Larson. In preparation for trial, defense counsel did  
8 not request a CrR 3.5 hearing to determine whether Mr. Avila's statements to  
9 Detective Nichols had been made voluntarily. At trial, Detective Nichols testified  
10 about the statements Mr. Avila made during the interview. Mr. Avila also testified  
11 at trial in his own defense. The statements Detective Nichols attributed to Mr.  
12 Avila were inconsistent with Mr. Avila's trial testimony. At the conclusion of the  
13 trial, the jury found Mr. Avila guilty, and the court sentenced him to 90 months to  
14 life.

## 15 **PROCEDURAL HISTORY**

### 16 **Direct Appeal**

17 On direct appeal, Petitioner challenged the voluntariness of his statements  
18 to Detective Nichols during the June 16, 2011 interview. In response, the State  
19 requested the matter be remanded to the trial court for a CrR 3.5 hearing. The  
20 Court of Appeals granted the State's motion and remanded the case for a CrR 3.5  
21 hearing.

22 The superior court held a CrR 3.5 hearing on January 15, 2015. The superior  
23 court concluded Petitioner's statements to Detective Nichols on June 16, 2011,  
24 were not the result of a custodial interrogation. Therefore, Petitioner's statements  
25 were voluntary and admissible. The superior court's Order contained the following  
26 findings of fact:

- 27 1. On June 12, 2011, Bonnie J. Larson, an elderly resident of the Sycamore  
28 Glen Family Home, a facility licensed by the state for long-term care,

- 1 told various people at her church that she had been forcibly raped by an  
2 employee of the home the previous night.
- 3 2. On June 13, 2011 when at the local hospital for a routine appointment,  
4 Ms. Larson reported again that she had been raped at Sycamore Glen on  
5 June 11, 2011 by a caregiver named "Luis." She was given a rape  
6 examination but there were no overt signs of assault. The medical  
7 personnel collected "swabs" as part of a standard rape kit, which were  
8 sent to the Washington State Patrol Crime Lab for analysis.
- 9 3. The medical personnel contacted law enforcement and Detective Jackie  
10 Nichols of the Asotin County Sheriff's Office was assigned the case and  
11 responded to the hospital to investigate.
- 12 4. Detective Nichols interviewed Ms. Larson at the hospital and spoke with  
13 other potential witnesses.
- 14 5. The Detective contacted Saree Kromrei, the Administrator of Sycamore  
15 Glen. Ms. Kromrei told Detective Nichols that the employee identified as  
16 "Luis" was Luis A. Avila. She indicated that she was a friend of Mr.  
17 Avila's and that she had heard about the report but did not believe it. She  
18 told the Detective that she had already spoken with Mr. Avila and that he  
19 had told her that the accusations were "completely false."
- 20 6. Over the next few days Detective Nichols continued her investigation  
21 and at some point called Mr. Avila on the phone and asked if he would  
22 be willing to come in for an interview. Mr. Avila agreed to come in and  
23 together they arranged a time which would be mutually convenient.
- 24 7. After speaking with Mr. Avila on the phone, Detective Nichols received  
25 a call from Ms. Kromrei. She asked if she could accompany Mr. Avila to  
26 the interview. Detective Nichols told her that she had no objection and  
27 that she was welcome to attend.
- 28 8. On June 16, 2011, during regular working hours. Luis A. Avila and  
Sharee Kromrei arrived at the Asotin County Sheriff's Office for the  
interview, having driven to that location in a private vehicle. They were  
met by Detective Nichols in the lobby and escorted to the interview room  
inside of the Sheriff's Office.
9. The interview room is regularly used for non-custodial interviews of  
witnesses, victims (including child victims), and persons of interest. The  
room is decorated in a nonthreatening manner with "homey" decor which  
includes muted lighting, upholstered chairs, pictures on the walls, and a  
small throw rug on the floor.
10. The interview room is near the back of the Sheriff's Office and the back  
exit door of the Office is clearly visible from the door of the interview  
room.

- 1 11. Detective Nichols, in full uniform including a badge and sidearm, was  
2 the only law enforcement person in the room, although on the way to the  
3 interview room other uniformed officers were visible at various  
4 workstations in the Sheriff's Office.
- 5 12. Once in the room Ms. Kromrei sat next to Mr. Avila. The seating  
6 arrangement was such that Mr. Avila and Ms. Kromrei were closer to the  
7 door and neither the Detective nor any other physical obstructions were  
8 between them and the door.
- 9 13. Prior to asking any questions, Detective Nichols told Mr. Avila that he  
10 was not under arrest and that he was free to leave at any time. At no time  
11 during the interview was Mr. Avila handcuffed or physically restrained  
12 in any manner. Neither he nor Ms. Kromrei was searched nor were they  
13 even asked whether they were carrying any weapons.
- 14 14. Detective Nichols did not advise Mr. Avila of his Miranda rights prior to  
15 interviewing him.
- 16 15. Detective Nichols did not offer an interpreter.
- 17 16. The Detective began the interview by telling Mr. Avila about the  
18 accusation and asked him for his account of the evening in question.
- 19 17. Mr. Avila vehemently denied the allegation that he had any sexual  
20 contact with Ms. Larson. He stated that he was never in the bathroom  
21 with her, was never alone with her, and denied any sexual contact  
22 whatsoever. When he was specifically asked if there would be any  
23 reason that his DNA could be found inside of Ms. Larson, he stated  
24 "No."
- 25 18. Detective Nichols asked Mr. Avila if he would be willing to take a  
26 polygraph test in regards to the allegations. He responded, without  
27 hesitation "Yeah, I will pass."
- 28 19. At no time did Mr. Avila ask for a lawyer he never asked to leave; never  
asked for questioning to stop nor did he decline to answer any questions;  
he never asked to take a break from questioning. (Detective Nichols  
testified at the hearing that had he done so, she would have honored any  
such requests).
20. The entire interview lasted no more than twenty minutes and at the  
conclusion Mr. Avila walked out of the Sheriff's Office with Ms.  
Kromrei and they left together.
21. Detective Nichols testified that at the time she spoke with Mr. Avila she  
was still in the "investigatory phase" and that at that time she did not  
have probable cause to arrest Luis A. Avila.
22. No criminal charges were filed against Mr. Avila until eleven months  
after the interview and then only after the Crime Laboratory confirmed

1 that swabs taken from Ms. Larson during her examination at the hospital  
2 contained spermatozoa and testable DNA.

3 23. Mr. Avila had a substantial history of involvement with the judicial  
4 system in the United States, which included two separate full divorce  
5 proceedings, a child support adjudication, at least five traffic infractions  
6 and six different criminal charges in the state of Idaho between 2006 and  
7 the date of the interview in 2011. During these proceedings Mr. Avila  
8 had been represented by both appointed and privately retained counsel.

9 Petitioner appealed the superior court's findings of fact and conclusions of  
10 law. The Washington Court of Appeals affirmed the superior court's conclusion  
11 that Detective Nichols' interview of Petitioner did not constitute a custodial  
12 interrogation. The Washington Supreme Court denied Petitioner's request for  
13 discretionary review on September 6, 2017.

## 14 STANDARD

15 A petition for writ of habeas corpus on behalf of a prisoner in state custody  
16 is brought under 28 U.S.C. § 2254. Relief under § 2254 is limited to "violation[s]  
17 of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).  
18 A habeas corpus petition may be granted with respect to any claim adjudicated on  
19 the merits in state court only if the state court's decision was "contrary to," or  
20 involved an "unreasonable application of," clearly established federal law as  
21 determined by the Supreme Court, or if the decision was based on an unreasonable  
22 determination of the facts in light of the evidence presented. 28 U.S.C. § 2254(d).

23 Only "clearly established Federal law, as determined by the Supreme Court  
24 of the United States," can be the basis for relief under the AEDPA. *Campbell v.*  
25 *Rice*, 408 F.3d 1166, 1170 (9th Cir. 2005). "Clearly established Federal law" is the  
26 "governing legal principle or principles set forth by the Supreme Court at the time  
27 the state court renders its decision." *Lockyer v. Andrade*, 538 U.S. 63, 71 (2003).

28 Under the "contrary to" clause, a federal court may grant habeas relief only  
if "the state court arrives at a conclusion opposite to that reached by the Supreme  
Court on a question of law, or if the state court decides a case differently than the

1 Supreme Court has on a set of materially indistinguishable facts.” *Williams v.*  
2 *Taylor*, 529 U.S. 362, 412-13 (2000). Under the “unreasonable application”  
3 clause, a federal court may grant habeas relief only if “the state court identifies the  
4 correct governing legal principle from the Supreme Court’s decision, but  
5 unreasonably applies that principle to the facts of the prisoner’s case.” *Id.* A  
6 federal court may also grant a writ of habeas corpus if a material factual finding of  
7 the state court reflects “an unreasonable determination of the facts in light of the  
8 evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d)(2).

9 If a habeas petitioner challenges the determination of a factual issue by a  
10 state court, such determination shall be presumed correct, and the petitioner has  
11 the burden of rebutting the presumption of correctness by clear and convincing  
12 evidence. 28 U.S.C. § 2254(e)(1).

13 28 U.S.C. § 2254(d) sets forth a “highly deferential standard for evaluating  
14 state-court rulings.” *Lindh v. Murphy*, 521 U.S. 320, 333 n. 7 (1997). “As a  
15 condition for obtaining habeas corpus from a federal court, a state prisoner must  
16 show that the state court’s ruling on the claim being presented in federal court was  
17 so lacking in justification that there was an error well understood and  
18 comprehended in existing law beyond any possibility for fair-minded  
19 disagreement.” *Harrington v. Richter*, 562 U.S. 86, 103 (2011).

## 20 EVIDENTIARY HEARING

21 “Because the deferential standards prescribed by § 2254 control whether to  
22 grant habeas relief, a federal court must take into account those standards in  
23 deciding whether an evidentiary hearing is appropriate.” *Schriro v. Landrigan*,  
24 550 U.S. 465, 474 (2007). “[A]n evidentiary is not required on issues that can be  
25 resolved by reference to the state court record.” *Totten v. Merkle*, 137 F.3d 1172,  
26 1176 (9th Cir. 1998). Stated differently, if the state court record “precludes habeas  
27 relief” under § 2254(d), “a district court is ‘not required to hold an evidentiary  
28

1 hearing.’ ” *Cullen v. Pinholser*, 563 U.S. 170, 183 (2011) (quoting *Schriro*, 550  
2 U.S. at 474.

### 3 **DISCUSSION**

4 Petitioner argues that State violated his Fifth and Fourteenth Amendment  
5 rights when it introduced into evidence Petitioner’s statements to Detective  
6 Nichols. Petitioner argues that his interview with Detective Nichols on June 16,  
7 2011 was a custodial interrogation, which required Detective Nichols to advise  
8 Petitioner of his *Miranda* rights prior to questioning. Because Petitioner was not  
9 given a *Miranda* warning, he claims his statements were involuntary and  
10 inadmissible at trial.

#### 11 **A. Custodial Interrogation.**

12 The Fifth Amendment provides that no person “shall be compelled in any  
13 criminal case to be a witness against himself.” U.S. Const. amend. V. The  
14 privilege against self-incrimination is applicable to the states through the Due  
15 Process Clause of the Fourteenth Amendment. *Malloy v. Hogan*, 378 U.S. 1, 84  
16 (1964).

17 The Supreme Court has established procedural safeguards that require  
18 police to advise a criminal suspect of his rights, under the Fifth and Fourteenth  
19 Amendments, prior to commencing a custodial interrogation. *Miranda v. Arizona*,  
20 384 U.S. 436, 444 (1966). Police are required to advise criminal suspects of their  
21 *Miranda* rights only when the person is subjected to custodial interrogation by  
22 government officials. *Thompson v. Keohane*, 516 U.S. 99, 102 (1995).

23 An objective test is used to determine whether a suspect is “in custody” for  
24 purposes of *Miranda*. *Yarborough v. Alvarado*, 541 U.S. 652, 662-63 (2004).  
25 “[T]he initial determination of custody depends on the objective circumstances of  
26 the interrogation, not on the subjective views harbored by either the interrogating  
27 officers or the person being questioned.” *Stansbury v. California*, 511 U.S. 318,  
28 323 (1994). Thus, to determine whether a suspect is “in custody,” federal courts

1 must examine “ ‘all of the circumstances surrounding the interrogation’ and  
2 determine ‘how a reasonable person in the position of the individual being  
3 questioned would gauge the breadth of his or her freedom of action.’ ”  
4 *Yarborough*, 541 U.S. at 663 (quoting *Stansbury*, 511 U.S. at 322).

5 We turn now to the case before us and ask if the state court’s adjudication of  
6 Petitioner’s claim was “contrary to,” or involved an “unreasonable application of,”  
7 clearly established federal law when it concluded that Petitioner was not in  
8 custody<sup>3</sup> at the time of his interview with Detective Nichols.

9 Following the CrR 3.5 hearing on January 15, 2015, the superior court  
10 entered an Order memorializing its findings of facts and conclusions of law  
11 regarding the admissibility of Petitioner’s statements to Detective Nichols. The  
12 superior court ruled that the June 16, 2011 interview as not a custodial  
13 interrogation requiring *Miranda* warnings.

14 Petitioner appealed the superior court’s conclusion and challenged its  
15 findings of fact. The Washington Court of Appeals took judicial notice of the  
16 superior court’s findings of fact, concluding that the factual findings were  
17 supported by substantial<sup>4</sup> evidence. The Court of Appeals affirmed the superior  
18 court’s conclusion that the June 16, 2011 interview was not a custodial  
19 interrogation.

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22 <sup>3</sup> There is no dispute that Detective Nichols’s interview of Petitioner on June 16,  
23 2011, was an “interrogation,” for purposes of *Miranda*.

24 <sup>4</sup> With respect to Findings of Fact Nos. 13 and 16, the Court of Appeals found  
25 substantial evidence supported only part of the findings. ECF No. 9-1 at 758.  
26 Nonetheless, the court concluded that the unsupported portions did not affect the  
27 ultimate conclusion that the June 16, 2011 interview was not a custodial  
28 interrogation. *Id.*

1       Petitioner argues that the Court of Appeals' decision was erroneous because  
2 (1) he is a Spanish speaking Guatemalan immigrant with a marginal education  
3 who speaks broken English; (2) his understanding of English and the American  
4 Judicial System is very limited; (3) he was put in the untenable position of being  
5 summoned to a police station and subjected to an interrogation that occurred in  
6 English; and (4) Detective Nichols was aware of Mr. Avila's language barrier at  
7 the time of the interrogation and never inquired whether he needed an interpreter,  
8 nor was one offered or provided. ECF No. 5 at 12.

9       The Washington Court of Appeals addressed Petitioner's arguments, either  
10 explicitly or implicitly, in reaching its decision on the issue of custodial  
11 interrogation.

12       Mr. Avila makes a number of arguments as to why a person in his  
13 position would not believe he had a right to leave the interview with  
14 Detective Nichols. First he argues he has limited English  
15 comprehension and nothing is known about his education. However,  
16 though Mr. Avila is Guatemalan, Detective Nichols testified he  
17 appeared to understand her questions and that his answers to the  
18 questions were appropriate. Moreover, Mr. Avila prepared a written  
19 statement that he read to the court at the CrR 3.5 hearing that  
20 demonstrated his high level of English proficiency. His ability to  
21 understand sophisticated legal concepts is also demonstrated by his  
22 first statement of additional grounds for review (SAG). There is  
23 strong evidence that Mr. Avila had a sufficient grasp of English to  
24 understand that his participation in the interview was not compulsory.

25       Moreover, his experience with the legal system is some evidence that he  
26 was aware of what a custodial law enforcement environment looks like. He  
27 was arrested twice in 2006, twice in 2007, and once in both 2008 and 2010.  
28 The trial court could reasonably consider whether, after six arrests, Mr.  
Avila had enough experience to understand that the interview with  
Detective Nichols was not a custodial interrogation.

Second, Mr. Avila argues he understood Detective Nichols's "asking" him  
to come to sheriff's office as an order and not a request. The trial court's  
unchallenged findings weaken this argument. The court found that

1 Detective Nichols “asked” Mr. Avila if he would be “willing” to come down  
2 for an interview, and that they agreed to a time that was “mutually  
3 convenient.” Additionally, the court found that Ms. Kromrei drove Mr.  
4 Avila to the interview – he was not transported there by law enforcement.  
5 These facts are indicative of a request, rather than an order, to come to the  
6 interview.

7 Third, Mr. Avila argues he did not understand he could leave because the  
8 interview room was behind locked doors at the stationhouse, and Detective  
9 Nichols was in uniform when she questioned him. However, the court found  
10 that before beginning the interview, Detective Nichols told Mr. Avila he  
11 was free to leave at any time. The court also found that Mr. Avila was not  
12 searched, handcuffed, or restrained in any way, that he sat on the side of the  
13 table nears the door, and that no obstacle blocked his path to the door.  
14 Moreover, the interview only lasted 20 minutes and when it was over Mr.  
15 Avila simply walked out. A reasonable person in Mr. Avila’s position  
16 would have known he was free to leave.

17 Fourth, Mr. Avila argues the court improperly placed great weight on the  
18 fact that Ms. Kromrei was present during the interview. Mr. Avila states he  
19 was never asked if he would allow Ms. Kromrei to be present, and that no  
20 information suggests she would be qualified to help him. Mr. Avila’s own  
21 testimony at the hearing undercuts these arguments:

22 When I agreed about the interview that was after talking to  
23 [Sharee] and I explain her what I was afraid of and she is the  
24 one that told me not to be afraid because she as going to talk to  
25 Det. Nichols and she asked if she could be with me during the  
26 interview and she said that if I would have been arrested then  
27 she would have been able to help me. That’s the reason why  
28 [Sharee] was present during the interview.

29 This shows Mr. Avila knew Ms. Kromrei was going to be at the interview,  
30 and that he wanted her there. In addition, he conferred with her about  
31 whether to allow the interview to be recorded, which not only shows that  
32 she helped him, but that he knew he had the right to refuse. The simple fact  
33 of Ms. Kromrei’s presence shows Mr. Avila was not isolated and indicates a  
34 noncustodial environment.

1 Fifth, Mr. Avila argues that his choice to attend the interview was  
2 constrained because he thought the interview might concern working for  
3 Ms. Kromrei “under the table,” and because he knew he was suspected of  
4 raping Ms. Larson. This argument is not persuasive because Detective  
5 Nichols told him he was free to leave at any time. Mr. Avila’s psychological  
6 state of mind does not show the interview was custodial in the absence of  
7 any indication that his freedom of movement was restricted.

8 Finally, Mr. Avila argues the trial court improperly took judicial notice of  
9 the setup of the interview room. As discussed above, sufficient evidence  
10 supports the court’s finding about the environment of the interview room.

11 Nothing about the interview suggested a custodial interrogation. The record  
12 supports the trial court’s finding that the interview was not a custodial  
13 interrogation.

14 Petitioner fails to show the Court of Appeals’ decision was “contrary to,” or  
15 based on an “unreasonable application of” clearly established federal law. The  
16 Court of Appeals took the superior court’s findings of fact, which are presumed<sup>5</sup>  
17 to be correct, and reasonably applied the clearly established federal law relevant to  
18 determining whether an individual is in custody for purposes of *Miranda*.  
19 Accordingly, Petitioner’s claim is denied.

## 20 **CERTIFICATE OF APPEALABILITY**

21 A petitioner seeking post-conviction relief under § 2254 may appeal a  
22 district court’s dismissal of his federal habeas petition only after obtaining a  
23 certificate of appealability from a district or circuit judge. A certificate of  
24 appealability may issue only where a petitioner has made “a substantial showing of  
25 the denial of a constitutional right.” 28 U.S.C. § 2253(c)(3). A petitioner satisfies

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26 <sup>5</sup> If a habeas petitioner challenges the determination of a factual issued by a state  
27 court, such determination shall be presumed correct, and the petitioner has the  
28 burden of rebutting the presumption of correctness by clear and convincing  
evidence. 28 U.S.C. § 2254(e)(1).

1 this standard when “reasonable jurists could debate whether (or, for that matter,  
2 agree that) the petition should have been resolved in a different manner or that the  
3 issues presented were adequate to deserve encouragement to proceed further.”  
4 *Boyer v. Chappell*, 793 F.3d 1092, 1106 (9th Cir. 2015) (quoting *Miller-El v.*  
5 *Cockrell*, 537 U.S. 322, 336 (2003)) (internal quotation marks omitted). The Court  
6 finds Petitioner has not made such a showing.

7 Accordingly, **IT IS HEREBY ORDERED:**

- 8 1. Petitioner’s Petition for Writ of Habeas Corpus by a Person in State  
9 Custody, ECF No. 5, is **DISMISSED**, pursuant to 28 U.S.C. § 2244(d).  
10 2. The Certificate of Appealability is **DENIED**.

11 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
12 enter this Order, furnish copies to counsel and pro se Petitioner, **enter judgment**  
13 against Petitioner, and **close** this file.

14 **DATED** this 25th day of July 2019.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive, flowing style.

Stanley A. Bastian  
United States District Judge